

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RICK OLMLSTEAD,

No. 13-CV-05051

Plaintiff,

PLAINTIFF'S SECOND
AMENDED COMPLAINT FOR
DAMAGES

**SECRETARY OF THE NAVY,
RAY MABUS.**

Defendant

Plaintiff, Rick Olmstead, through his attorneys alleges as follows:

I. PARTIES

1.1. Plaintiff, Rick Olmstead, resides in the State of Washington, and is an employee of Puget Sound Naval Shipyard in Bremerton, Kitsap County, Washington.

1.2 Defendant Ray Mabus is the Secretary of the Navy and is the proper defendant in this action.

II. JURISDICTION AND VENUE

2.1 All acts and omissions alleged herein occurred in Kitsap County, Washington. The U.S. District Court of Western Washington has jurisdiction over Plaintiff Rick Olmstead's federal claim(s) pursuant to 28 U.S.C. §1331.

1 2.2 Venue is proper in the U.S. District Court of Western Washington because all
2 acts occurred on federal property located in Kitsap County, Western District of Washington.

III. FACTS

3.1 Plaintiff Rick Olmstead is a veteran of the United States Armed Forces.

5 3.2 On or about August 24, 1975, Plaintiff Rick Olmstead was hired by Fleet and
6 Industrial Supply Center (FISC) of Bremerton, and continued to work for FISC until 1991.

7 3.3 At that time in 1991, Plaintiff Rick Olmstead was employed by FISC as a
8 Pipefitter Supervisor I, Step 5.

3.4 In 2006, Plaintiff Rick Olmstead returned to employment with FISC.

3.5 In 2006, when Plaintiff Rick Olmstead returned to employment with FISC, he lost 625 hours of sick leave, and was told that he could not be rehired back at the Supervisor I, Step 5 position because no record was available to show that he had sufficient experience.

13 3.6 In approximately 2008, Plaintiff Rick Olmstead was promoted to Supervisor I,
14 but at Step 1 instead of Step 5.

15 3.7 Plaintiff Rick Olmstead is currently employed as a Pipefitter Supervisor I, Series
16 4204, Grade 10.

17 3.8 Since approximately 2009, Plaintiff has applied for several permanent and/or
18 advanced vacancies.

19 3.9 On November 11, 2011, Plaintiff applied to become a Pipefitter Supervisor I but
20 was denied the position.

21 3.10 On January 26, 2012, Plaintiff applied for two separate vacancies; one for
22 Quality Assurance Specialist and another for Pipefitter Supervisor II. He was denied both
23 positions.

24 3.11 On or about February 7, 2012, Plaintiff applied for a promotion to Pipefitter
25 Supervisor II Vacancy ID: 591330 but was denied the position.

1 3.12 On April 6, 2012, Plaintiff applied to become a Pipefitter Supervisor II but was
2 denied the position.

3 3.13 On April 28, 2012, Plaintiff applied to become a Pipefitter Supervisor II but was
4 denied the position.

5 3.14 On June 11, 2012, Plaintiff applied to become a Pipefitter Lead and was denied
6 the position.

7 3.15 On July 19, 2013, Plaintiff applied to become a Pipefitter Supervisor II and was
8 denied the position.

9 3.16 On July 22, 2013, Plaintiff applied to become a Combined Trades Supervisor II
10 and was denied the position.

11 3.17 On July 24, 2013, Plaintiff applied to become a Pipefitter Supervisor I and was
12 denied the position.

13 3.18 On September 10, 2013, Plaintiff applied to become a Training Instructor and
14 was denied the position.

15 3.19 On October 24, 2013, Plaintiff applied to become a Pipefitter Supervisor I and
16 was denied the position.

17 3.20 On November 5, 2013, Plaintiff applied to become a Pipefitter Leader and was
18 denied the position.

19 3.21 On November 8, 2013, Plaintiff applied for a permanent promotion to Pipefitter
20 Supervisor II. He was not awarded the promotion and later discovered that the two individuals
21 promoted were less than 40 years of age and had been part of the Apprentice program.

22 3.22 Finally, on December 10, 2013, I applied to become a Combined Trades
23 Supervisor II I and was denied the position.

24 3.23 Plaintiff is qualified to receive a promotion to a supervisory position, and he has
25 veteran's preference for the promotion.

1 3.24 Despite Plaintiff's years of experience, impeccable employee record and
 2 dedication to the job, he continues to be denied these promotions and receives only temporary
 3 Supervisory positions which must be renewed at the end of each project. The result is that a
 4 disproportionate number of younger applicants are promoted over older applicants with similar
 5 qualifications and more experience.

6 3.25 In fact, many people promoted over Plaintiff are people that he trained.

7 3.26 Plaintiff made numerous complaints to his supervisors regarding his lack of
 8 promotion, and repeated promotion of others younger than him with less seniority.

9 3.27 In 2006, Rick Rollins told Plaintiff that he was passed over for a promotion
 10 because he was "too old," and "didn't fit in with the new way of doing things." At the time the
 11 comment was made, Rick Rollins was a Senior General Foreman who had influence over who
 12 was promoted to the exact vacancies Plaintiff had applied for. Specifically, Rick Rollins was in
 13 charge of giving evaluations which were used in determining whether to promote a particular
 14 applicant to any given vacancy in Shop 56 and had direct contact with the Shop 56
 15 Superintendent regarding who would receive the available promotions.

16 3.28 In 2012, Christopher Gal, told Plaintiff that old people are lazy and don't want
 17 to do anything. At the time the comment was made, Christopher Gal was a Zone Manager at
 18 NRMD Bangor, Washington. Mr. Gal had direct contact with the Nuclear Director and
 19 Superintendent of Shop 56 and could provide comments as to Plaintiff's eligibility for being
 20 promoted to the applied vacancies identified above.

21 3.29 In April 2012, Plaintiff attempted to file a Complaint for age discrimination with
 22 the Equal Employment Opportunity Commission Office at the Shipyard. Plaintiff met with
 23 EEO Counselor Gigi Bryant who would not allow him to file a Complaint. She told him that he
 24 did not have a claim and that the office would not investigate his complaint. Instead, she
 25 threatened to reprimand Plaintiff for referring to the younger generation of workers as "kids."

1 3.30 In addition, Ms. Bryant did not contact Plaintiff within 30 days after the meeting
2 to follow up with him, nor did she provide Plaintiff with *any* paperwork about his rights with
3 regard to seeking relief from age discrimination.

4 3.31 Since his attempted filing, Defendant has failed to assign Plaintiff overtime in
5 the amounts he was assigned in years passed. Specifically, Plaintiff has assigned 1/10th of the
6 overtime work since the filing of the present action as compared to years past.

7 3.32 On or about April 11, 2012, and pursuant to the FISC Human Resource Manual
8 Appendix 20D, Age Discrimination Complaints, Plaintiff provided Notice of Intent to Sue to
9 the Equal Employment Opportunity Commission, as well as to the EEO Complaints Manager
10 for Fleet and Industrial Supply Center Puget Sound.

11 3.33 On January 31, 2013, provided his Notice of Intent to Sue regarding his claims
12 for Retaliation to the Equal Employment Opportunity Commission and Counsel for Defendant.

13 3.34 Plaintiff has satisfied all administrative procedures, and can file this Amended
14 Complaint directly in U.S. District Court.

**IV. CAUSE OF ACTION I: RETALIATION IN VIOLATION OF THE AGE
DISCRIMINATION IN EMPLOYMENT ACT (ADEA)**

17 4.1 Plaintiff was engaging in statutorily protected activity, as he was exercising his
18 right to be free from discrimination at his workplace and to file a civil action against Defendant
19 alleging age discrimination.

20 4.2 Defendant, through itself and its agents, took adverse employment action against
21 Plaintiff when it withheld assignment of overtime hours after learning that Plaintiff was
22 attempting to resolve the discrimination he was subjected to by filing a complaint for relief.

23 4.3 After filing the present action in 2013, Plaintiff was assigned 1/10th of the
24 number of overtime hours that he has received in 2012.

25 4.4 Defendant's desire for retaliation against Plaintiff is the sole reason for denying

1 him overtime hours that he had been assigned in years past.

2 4.5 Since filing the present action, Plaintiff has not been selected for promotional
3 advancements he has applied for, despite being more experienced than those receiving the
4 promotions.

5 4.6 Since filing the present action, Plaintiff has not been made a permanent
6 Pipefitter Supervisor I, despite having years of experience working as a temporary Pipefitter
7 Supervisor I.

8 4.7 The above-referenced adverse employment action was a result of Plaintiff
9 having filed the present action against Defendant.

10 4.8 As a proximate result of Defendant's wrongful acts, Plaintiff has suffered
11 damages.

V. RELIEF SOUGHT

13 WHEREFORE, Plaintiff prays for judgment against defendant as follows:

- 1.1 For judgment in such an amount as shall be proven at the time of trial.
 - 1.2 For all damages available pursuant to the ADEA.
 - 1.3 For an award of attorney fees and costs incurred herein.
 - 1.4 For such other and further relief as the court deems just and equitable.

DATED this 29th day of May, 2013.

Wong Fleming

Deanna J Caley
Diana Caley, WSBA No. 23413
Attorney for Plaintiff, Rick Olmstead